



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

October 26, 2018

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer James Frascatore**
Tax Registry No. 950440
Grand Larceny Division
Disciplinary Case No. 2015-14455

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on June 4 and July 31, 2018, and was charged with the following:

DISCIPLINARY CASE NO. 2015-14455

1. Said Police Officer James Frascatore, while on-duty, while assigned to Financial Crimes Task Force, on September 9, 2015, in New York County, did fail and neglect to promptly notify his Supervisor regarding the arrest and release of an individual known to the Department.

P.G. 210-13, Page 1, Paragraph 1

RELEASE OF PRISONERS

2. Said Police Officer James Frascatore, while on-duty, while assigned to Financial Crimes Task Force, on September 9, 2015, in New York County, did fail and neglect to enter a voided arrest in a timely manner of an individual known to the Department.

P.G. 210-13, Page 1, Paragraph 6

RELEASE OF PRISONERS

3. Said Police Officer James Frascatore, while on-duty, while assigned to Financial Crimes Task Force, on September 24, 2015, in New York County, engaged in conduct prejudicial to the good order and efficiency of the Department, in that said Police Officer Frascatore performed investigative work while on modified duty.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

4. Said Police Officer James Frascatore, while on-duty, while assigned to Financial Crimes Task Force, on September 24, 2015, in New York County, did wrongfully divulge official Department business on a pending investigation to an individual known to the Department.

P.G. 203-10, Page 1, Paragraph 3

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated August 29, 2018, Assistant Deputy Commissioner Jeff S. Adler found the Respondent Guilty of Specification Nos. 3 and 4 and Not Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 2015-14455. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the misconduct to which Police Officer Frascatore was found Guilty of and deem that a greater penalty is warranted. Therefore, Police Officer Frascatore shall forfeit fifteen (15) vacation days, as a disciplinary penalty.



James P. O'Neill
Police Commissioner



POLICE DEPARTMENT

August 29, 2018

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In the Matter of the Charges and Specifications : Case No.
- against - : 2015-14455
Police Officer James Frascatore :
Tax Registry No. 950440 :
Grand Larceny Division :
-----X-----

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier R. Seymore, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Peter E. Brill, Esq.
Brill Legal Group, P.C.
306 5th Avenue, Penthouse
New York, NY 10001

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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CHARGES AND SPECIFICATIONS

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P.G. 210-13 Page 1, Paragraph 1 - RELEASE OF PRISONERS

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P.G. 210-13 Page 1, Paragraph 6 - RELEASE OF PRISONERS

3. Said Police Officer James Frascatore, while on-duty, while assigned to Financial Crimes Task Force, on September 24, 2015, in New York County, engaged in conduct prejudicial to the good order and efficiency of the Department, in that said Police Officer Frascatore performed investigative work while on modified duty.

P.G. 203-10 Page 1, Paragraph 5 - PROHIBITED CONDUCT

4. Said Police Officer James Frascatore, while on-duty, while assigned to Financial Crimes Task Force, on September 24, 2015, in New York County, did wrongfully divulge official Department business on a pending investigation to an individual known to the Department.

P.G. 203-10 Page 1, Paragraph 3 - PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 4 and July 31, 2018. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Scott Reiser and Lieutenant Jerry Caicedo as witnesses. Respondent called Deborah Eckels, Sergeant Dennis Chan, Detective Daniel Herzog, Deputy Inspector Charles Barton, and Detective Daniel Alessandrino as witnesses, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find as follows:

Specification 1 (failure to notify): Not Guilty

Specification 2 (untimely voided arrest): Not Guilty

Specification 3 (prejudicial investigative work): Guilty

Specification 4 (wrongfully divulged information): Guilty

Recommended penalty: ten (10) vacation days.

ANALYSIS

On September 9, 2015, Respondent was part of a Financial Crimes Task Force ("FCTF") team investigating credit card fraud. During a controlled delivery at the Grand Hyatt Hotel in Manhattan, a suspect was identified in front of the hotel. Respondent tackled him to the ground, placed him in handcuffs, and walked the individual a short distance away. Within minutes, it was determined that the person stopped was not the perpetrator; rather, he was Person A, ■

[REDACTED] The circumstances surrounding Respondent's conduct during the apprehension of Person A were addressed in a previous disciplinary trial.

This second trial deals with the aftermath of Person A's apprehension. Respondent is charged with failing to promptly notify his supervisor regarding the arrest and subsequent release of Person A, and for failing to enter a voided arrest of Person A in a timely manner. Additional specifications allege that Respondent prejudicially performed investigative work while on modified duty in connection with this matter. Specifically, Respondent was personally involved in retrieving video footage showing his interaction with Person A as he was being released from custody. Respondent also faces a related charge for sending copies of that video footage to his relatives, one of whom forwarded the video to a local newspaper.

Sergeant Scott Reiser, who was assigned to IAB at the time of the incident, investigated the matter after-the-fact by interviewing witnesses, including members of service, and canvassing for video. Sergeant Reiser testified that the operation's supervisor, Sergeant Chan, was not present for the controlled delivery on September 9. According to Sergeant Reiser, the supervisor normally is present to coordinate the operation and verify any arrests that occur. In Sergeant Chan's absence, that responsibility fell to Detective Herzog, who was running this operation, and Detective Woods, an experienced member of the team. (Tr. 24-27, 47-51)

Sergeant Reiser reviewed video footage from the Hyatt showing Respondent's apprehension of Person A. He also reviewed footage from an ARGUS camera located outside on the street, covering a broader area of 42nd Street. The ARGUS footage showed Respondent escorting Person A away from the front of the hotel in handcuffs to a more secluded area by the side of the hotel, where they were joined by Detective Herzog. After a brief period of time, the handcuffs were removed and Person A walked away from the scene. Sergeant Reiser testified that he considered Person A to have been placed under arrest, since he was handcuffed for over five minutes, walked a short distance away from the initial encounter, and frisked. According to Sergeant Reiser, when the arrestee was subsequently released it was Respondent's responsibility as the arresting officer to notify Sergeant Chan, but he did not do so. Sergeant Reiser did acknowledge, though, that Detective Herzog either called or texted Sergeant Chan after Person A's release. (Tr. 28-31, 56, 72)

Sergeant Reiser also testified that it was the responsibility of the arresting officer to enter the voided arrest into the system. According to Sergeant Reiser, there was some delay before Person A's arrest was voided on the computer at approximately 1700 hours, though the sergeant did not know the exact length of the delay. (Tr. 33-36, 59-61)

Sergeant Reiser testified that Respondent was modified the same day, and so he surrendered his firearm and shield. Nevertheless, two weeks later Respondent went with Lieutenant Caicedo to the Lower Manhattan Security Initiative ("LMSI") to retrieve the ARGUS video footage from outside the Hyatt that showed the release of Person A. According to Sergeant Reiser, Respondent was performing such work, which he characterized as "investigative," while on modified status. Further, Respondent should not have been working on a case where he, himself, was being investigated for possible misconduct. Not only did Respondent obtain the video footage from the ARGUS camera, he sent copies of that video to family members. One of

those relatives, his sister-in-law [REDACTED], sent the footage to the New York Post, where it appeared on their website. (Tr. 36-40, 44, 67-68)

Lieutenant Jerry Caicedo, formerly with the FCTF, testified that on September 24, 2015, Respondent informed him that there was video footage ready to be picked up from LMSI. The lieutenant checked with his supervisor, Captain Flanagan, who stated that he believed the DA's Office already had the video. Respondent contacted Detective Herzog, then informed the lieutenant that the DA still needed the video, so Lieutenant Caicedo and Respondent drove together to LMSI. (Tr. 79-81, 93)

Upon arrival, they both went inside to retrieve the video, and the lieutenant signed for it. Lieutenant Caicedo testified that they then drove to the Hyatt to try to obtain additional video footage. Parking was difficult, so the lieutenant remained in the car while Respondent went inside to get the video, but he was not successful. (Tr. 82-86) Lieutenant Caicedo acknowledged that he knew Respondent was modified at the time they went together to retrieve the video. However, the lieutenant was not aware of any order prohibiting Respondent from leaving the office or performing the type of work they did that day. (Tr. 87-93, 97)

Respondent testified that he was assigned to the FCTF in July 2014, in a support role to the detectives in the unit. On the date of the incident, Respondent apprehended Person A on the instructions of Detective Herzog, the lead detective. Detective Herzog then determined that Person A was not the correct suspect and released him. According to Respondent, Detective Herzog was considered the "arresting officer" for anyone apprehended during the operation, including Person A. As such, Detective Herzog was responsible for processing the arrests, including preparing a Stop, Question and Frisk report ("UF-250") or doing a voided arrest for Person A. It also was Detective Herzog's responsibility to notify the supervisor, Sergeant Chan, regarding what had transpired at the scene, which he did. (Tr. 214, 218-23, 241)

Respondent was modified the day of the incident, and surrendered his shield and firearm. Respondent testified that he did not receive a specific explanation for his change in status, though he was aware that there was a CCRB investigation into his conduct. While modified, Respondent continued to assist in investigations in more of a support role. On or about September 22, 2015, Detective Herzog asked Respondent to look into obtaining additional video evidence for the District Attorney. Respondent completed and sent a request to LMSI requesting the video footage from the ARGUS camera, and informed Lieutenant Caicedo when the video was available for pick-up. On or about September 24, Respondent and Lieutenant Caicedo drove to LMSI and went inside, where the lieutenant signed for the video. They then drove to the Hyatt in an attempt to retrieve additional footage. Since parking was difficult, the lieutenant remained in the car while Respondent went inside to check on the availability of the video. Respondent testified that he did not believe it was a problem for him to play a role in obtaining this video footage while he was modified. (Tr. 228-35, 241-43)

Back at the command, Respondent viewed the LMSI video, which provided a broader view of the incident, including how he and Person A shook hands before parting ways. Respondent testified that he was upset because this footage had not been released to the public. According to Respondent, the barrage of media attention following this incident was "hell" for his family. Respondent, his children, and his wife all received death threats, forcing them to move from their home several times. The children had to be escorted to school by local police. Respondent explained how he was portrayed as a psycho and a racist cop, and that his career and professional reputation have been destroyed. He admitted that he made a copy of the LMSI footage with his phone, and sent it to his family members so they could see a more complete version of what occurred. Respondent acknowledged that he should not have shared the video with his family, but insisted that he did not ask anyone to release the footage to the public. (Tr. 226, 235-38, 246)

Sergeant Dennis Chan of the FCTF testified that he was involved in a separate warrant case when the controlled delivery was being conducted. He described Detective Herzog as the "case officer," which meant that Detective Herzog would be the "arresting officer" if anyone were apprehended. According to Sergeant Chan, Detective Herzog also was his point of contact, responsible for keeping the sergeant informed of any developments in the case, and for entering any online arrest reports; the sergeant explained that this would be Detective Herzog's responsibility even if another officer physically apprehended an individual. (Tr. 116, 123-24, 141-43)

Sergeant Chan testified that Detective Herzog did, indeed, call him around noon about what had transpired at the Hyatt. The detective told him that they had two individuals under arrest, and that another person who had been stopped was determined not to be the right guy and was released. Based on the limited information provided, the sergeant directed Detective Herzog to prepare a UF-250 for the released individual. (Tr. 121, 131-32, 144) Later that afternoon, Sergeant Chan was called by his supervisor, Captain Flanagan, who wanted more information about the incident. Sergeant Chan reached out to another team member, Detective Alessandrino, for further details of what had occurred, and Detective Alessandrino e-mailed the details of Person A's arrest to the sergeant sometime after 1700 hours. Sergeant Chan forwarded that e-mail to Captain Flanagan, who told the sergeant to report to headquarters. Captain Flanagan directed that the UF-250 report be changed to a "voided arrest" for Person A, and Sergeant Chan instructed Detective Herzog to do so. (Tr. 126-29, 136-37, 144)

Detective Daniel Herzog of the FCTF testified that he ran the tactical meeting before the operation, and he assigned roles to the team members. When Detective Herzog observed a person who matched the description of one of the suspects, he told Respondent to arrest the individual, who turned out to be Person A. Detective Herzog testified that within a few minutes, he

walked over to Respondent and Person A, and "took over" the handling of the matter. Specifically, Detective Herzog spoke with Person A, quickly realized that the officers had made a mistake, and uncuffed the suspect. (Tr. 153-54, 158-60)

As the case officer, it was Detective Herzog's responsibility to act as the arresting officer. Detective Herzog testified that at no point did he delegate the arrest processing responsibility to Respondent. Since Sergeant Chan was involved in another operation, Detective Herzog called him from the scene to alert him what had transpired; Detective Herzog testified that it was his responsibility, and not Respondent's, to communicate with the supervisor. Detective Herzog told Sergeant Chan that there were two individuals under arrest, and a third who was let go. He testified that he did not believe, however, that he informed the sergeant that the released individual was Person A. Sergeant Chan instructed Detective Herzog to come to the precinct and prepare a UF-250 for the released suspect. Later he was directed to do a voided arrest for Person A rather than a UF-250, which he did after he completed the processing of the two other arrestees. Detective Herzog testified that he did not instruct Respondent to do the voided arrest since that responsibility rested with Detective Herzog as the arresting officer. (Tr. 155, 161-62, 168-69, 170-75)

When questioned about the video footage, Detective Herzog testified that he asked Respondent to obtain the ARGUS footage from LMSI, which he did. At that time, the DA's Office was not even aware of its existence. (Tr. 165-67)

Detective Daniel Alessandrino of the Special Fraud Squad testified that he was an assisting investigator on the scene on September 9. On the way back to the precinct to process the arrests, he spoke with Sergeant Chan about what had occurred. Later, he helped compose an e-mail to the supervisor summarizing what had transpired at the Hyatt. (Tr. 195-97, 203-04)

According to Detective Alessandrino, about two weeks later, after the LMSI video had been leaked to the press, Deputy Inspector Barton from IAB appeared by himself at the FCTF offices. The Deputy Inspector demanded the video, and was handed the only copy. Detective Alessandrino asked if a copy of the video would be provided to the District Attorney's Office. Deputy Inspector Barton responded that no one was going to see this video, and he stormed out. (Tr. 198-200, 205, 207, 209)

Deputy Inspector Charles Barton, formerly of IAB, testified that he could not recall retrieving a video from the FCTF offices in September of 2015. Normally, he would have someone of lesser rank with him to take possession of the video, safeguard it, and prepare the necessary paperwork. (Tr. 189, 191)

Deborah Eckels, Respondent's sister-in-law, testified how the media coverage of the incident, which portrayed Respondent as a "psycho cop," had a devastating impact on the family. Respondent, his wife, and their children received death threats, and there were members of the press frequently outside their home. Eckels had seen the video of Person A's arrest in front of the hotel. However, she became aware that there was additional footage, which Respondent was hoping would demonstrate to his family that he was falsely being portrayed as a "monster" in the media. (Tr. 104-106)

According to Eckels, in late September or early October, Respondent texted her video footage that showed Respondent and Person A shaking hands after Person A was released. Eckels was angry that this video had never been released to the public, so she sent a copy to the New York Post. Eckels insisted that she made this decision on her own, without any input from Respondent or anyone else. (Tr. 106-108)

Specification 1 charges Respondent with failing to promptly notify his supervisor regarding the arrest and release of Person A. Section 210-13 (1) of the Patrol Guide provides that an

arresting officer will confer with a patrol supervisor and obtain consent for the release of a prisoner. If the patrol supervisor is not available for conferral, he will be notified as soon as possible of the release.

Here, at the time Person A was arrested and then released, Sergeant Chan was involved in a separate operation at another location. In his absence, Detective Herzog was his point of contact for anything that occurred at the scene of the operation. Respondent credibly explained that Detective Herzog was considered the arresting officer for anyone apprehended, and it was the detective's responsibility to communicate with the sergeant, which he did.

Both Sergeant Chan and Detective Herzog corroborated Respondent's testimony. They each testified in a professional and convincing manner that Detective Herzog was the arresting officer of Person A. Even though Respondent physically apprehended Person A, it was Detective Herzog, as the case officer, who was designated the arresting officer for anyone taken into custody as part of this operation. Moreover, as Detective Herzog explained, it "was my investigation, my scene, it would be my responsibility to notify the supervisor." As such, it was the responsibility of Detective Herzog, and not Respondent, to contact the supervisor. Indeed, Detective Herzog did call Sergeant Chan from the scene to alert him to what had transpired. Even if Detective Herzog's initial description to Sergeant Chan regarding the arrest of Person A could have been more detailed, that is not what is at issue here. Under these specific circumstances, it was not Respondent's responsibility to contact Sergeant Chan, and I find Respondent not guilty of Specification 1.

Specification 2 charges Respondent with failing to enter a voided arrest for Person A in a timely manner. Section 210-13 (6) of the Patrol Guide states that the arresting officer will immediately prepare an online booking arrest worksheet for a released prisoner, and then void

the arrest within the Omniform System. As with Specification 1, above, the issue here is whether the responsibility to void the arrest of Person A rested with Respondent.

Again, both Sergeant Chan and Detective Herzog corroborated Respondent's testimony that it was Detective Herzog's responsibility, as the arresting officer, to enter the voided arrest. Indeed, when Sergeant Chan received instructions from Captain Flanagan to replace the UF-250 with a voided arrest, the sergeant specifically directed Detective Herzog to comply with that instruction. Detective Herzog testified that he did, in fact, enter the voided arrest after he was finished processing the two arrestees who were still going through the system. Detective Herzog explained that since he, himself, was the arresting officer, there was no reason to delegate the task of entering the voided arrest to Respondent. Under these specific circumstances, the credible evidence has failed to establish that it was Respondent's responsibility to enter the voided arrest, and I find him not guilty of Specification 2.

Specification 3 charges Respondent with prejudicially doing investigative work involving this matter while on modified duty. Respondent was modified on September 9, 2015, the same day as the incident. Two weeks later, Respondent was actively involved in the retrieval of video footage from the ARGUS camera. Initially, Respondent discussed obtaining the footage with Detective Herzog. It was Respondent who completed and sent the request for video to LMSI. On September 24, Respondent accompanied Lieutenant Caicedo to retrieve that footage from LMSI. He and the lieutenant both went inside, and the lieutenant signed for the video. They then drove to the Hyatt with the hope of obtaining additional video. This time, Respondent, alone, went inside, but was unsuccessful in securing the footage.

It was improper for Respondent to be involved in the retrieval of this particular video footage. Respondent was aware that he was being investigated by the CCRB for what became, in his words, a "high-profile case" which received significant media attention within an hour of

the incident. The video footage was potential evidence bearing directly on that investigation. As Sergeant Reiser testified, "It's an independent investigation, and it could be biased if someone is a subject of the case that they're working on." Even if Respondent acted with the approval of his supervisor, it was not proper for him to be an active participant in obtaining and viewing the video himself, and he must bear some responsibility for that participation. Since Respondent was modified, and the subject of a significant investigation, he should not have been involved in this evidence gathering, and I find him guilty of Specification 3.

Specification 4 charges Respondent with wrongfully sharing video footage of the incident with his relatives, including his sister-in-law, Deborah Eckels. Section 203-10 (3) prohibits members of the service from divulging official Department business, except as authorized. Here, it is undisputed that Respondent sent a copy of the ARGUS video footage to various family members, including Eckels. Eckels then forwarded the video to the New York Post, which published it on its website. Eckels and Respondent credibly testified that it was Eckels, alone, who decided to send the footage to the Post, without any urging from Respondent.

Respondent insisted that the reason he sent the video to his relatives was to enable them to see the entire picture of what really occurred. However, even if Respondent wanted only to rehabilitate his image with his family, and did not intend for there to be a leak to the media, it was improper for him to forward this footage to family members. The video was evidence collected as part of an ongoing investigation involving Respondent. By even sharing this evidence with a relative, Respondent ran the risk that it might be publicly disclosed, as happened here. Respondent, himself, acknowledged that he exercised poor judgment in sharing that footage with his family. The credible evidence has established that Respondent did wrongfully divulge the video evidence to his sister-in-law, and I find him guilty of Specification 4.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 6, 2011. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of two of the four specifications. The Department Advocate recommends that Respondent forfeit 30 vacation days, but in light of the two not guilty findings, and the circumstances of this case, that penalty is excessive.

On the one hand, this tribunal is mindful that Respondent exercised poor judgment by participating in an ongoing investigation in which he was a subject. Respondent took an active role in retrieving, watching, and recording video evidence, and then sent copies of that evidence to his relatives. Respondent's sister-in-law then forwarded the video to the media. Even if that was an unintended consequence, it was one that could be foreseen by Respondent. The end result, whereby the video was published on a major newspaper's website, illustrates why Respondent, who was under investigation for his conduct during the incident, should have had no involvement in retrieving the video evidence, much less copying and distributing it.

However, this tribunal also appreciates the impact this incident had on Respondent and his family. Both Respondent and Deborah Eckels convincingly described how the publicity surrounding this matter had a devastating effect on the family, including death threats. Respondent was visibly distraught on the witness stand as he recounted how he and his family were affected by the barrage of negative media attention.

In this situation, Respondent's impulse to try to clear his name and restore his reputation with his family was not surprising, even though the manner in which he acted upon that impulse was improper. To his credit, Respondent, himself, acknowledged that he was wrong to have

shared the video with anyone. Still, there must be some accountability for his actions. Taking into account the totality of facts and circumstances in this matter, I recommend that Respondent forfeit ten (10) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JAMES FRASCATORE
TAX REGISTRY NO. 950440
DISCIPLINARY CASE NO. 2015-14455

Respondent was appointed to the Department on July 6, 2011. On his three most recent performance evaluations, he twice received 4.5 overall ratings of "Extremely Competent/Highly Competent," and once received a 4.0 overall rating of "Highly Competent."

Respondent has received two (2) medals for Excellent Police Duty and four (4) medals for Meritorious Police Duty.

In 2018, Respondent forfeited five (5) vacation days after being found guilty of the wrongful use of force. That case arose out of the same underlying incident as the instant matter.

Respondent was placed on modified assignment on September 9, 2015, the date of this incident; this duty status remains ongoing. Respondent also was placed on Level 1 Discipline Monitoring on March 10, 2016; that monitoring remains in effect as well.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials